IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16804 of 2002
Date of decision:21.11.2006

Haryana Distillery, Yamuna Nagar

....Petitioner

versus

Justice G.S.Chahal (Retd.) and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. S.Ganesh, Sr. Advocate
with Mr. Nilesh Kumar and Mr. Sapan Dhir, Advocates,
for the petitioner.

Ms. Ritu Bahri, DAG,Haryana.

JUDGMENT:

This petition seeks quashing of order dated 2.9.2002, Annexure P.3 passed by respondent No.2, Commission of Enquiry directing that an opportunity to explain be given to distilleries on following points:-

> "(i) If the transactions made by them with exporters for enabling them export of rectified spirit out of India was not a sale;
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> (ii)The transaction of sale of Rectified spirit fit for potable purpose did not contravene the provisions of the Act;
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> (iii)If the distilleries could claim exemption from export duty for the transfer of Rectified Spirit to exporters."

Further prayer is for quashing notification dated 10.5.2003, Annexure P-3/B, whereby a new Commission of Enquiry was appointed identical to earlier Commission of Enquiry which was set aside by this Court. Further prayer made is that observations made and findings recorded by Justice J.C.Verma (Retd.), Commission of Enquiry dated 30.7.2004 and

action taken report dated 29.9.2004 in so far as it concerned the petitioner be quashed.

Case of the petitioner is that the petitioner is manufacturing rectified spirit at its distillery at Yamuna Nagar, which is industrial raw material and is not liable to any duty under the Punjab Excise Act, 1914. The said subject matter being in List I of Seventh Schedule of the Constitution of India. During the year 1996-97, the petitioner exported rectified spirit to foreign countries as per permission granted by the Excise and Taxation Commissioner, Haryana.

On 7.12.1999, a Commission of Enquiry was constituted by the State Government under the provisions of Commission of Enquiry Act, 1952. The petitioner placed on record terms of reference of Commission of Enquiry, which are as under:-

> "(a) to enquire into the circumstances leading to the imposition of Prohibition in the State of Haryana with effect from Ist July, 1996 and its implications;
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> (b) to enquire into the allegations of widespread corruption due to smuggling of liquor/creation of liquor mafia in the state as well as the role played by persons in high places and their kith and kins in abetting these acts;
> (c) to enquire into the circumstances under which the policy of prohibition was withdrawn with effect from Ist April, 1998 and its implications like the resultant rise in crime after lifting of prohibition and other matters incidental thereto; and
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> (d) to enquire into the allegations that some persons played an active role in this withdrawal for pecuniary gains."

The petitioner filed the present writ petition seeking quashing of order of the Justice Chahal Commission dated 2.9.2002, inter-alia, on the ground that the terms of reference did not cover the matter on which the order was passed and the rectified spirit unfit for human consumption was not subject to excise duty as held in **Modi Distillery**, (1995) 5 SCC 753 and S**ynthetics & Chemicals Limited,** (1990) 1 SCC 109. The assessments having been made by statutory authorities, the same could not be questioned

before the Commission, broadly when the same had become final. On 18.10.2002, this court passed an order that no finding will be recorded by the Commission against the petitioner, which reads as under:-

> "C.M. Allowed as prayed.
>
> Notice of motion for November 12, 2002.
>
> Meanwhile the Commission will not record any finding against the petitioner."

The said Commission passed an order dated 2.9.2002 that the petitioner and other distilleries be given opportunity on the allegations that they had been illegally granted exemption from excise duty. This court quashed the appointment of the said Commission vide order dated 30.1.2003 in CWP No.18625 of 2001 (**Ch.Bansi Lal v. State of Haryana).** This court held that requisite satisfaction for appointment of Commission was not shown to have been formed on the basis of any cogent material. Relevant observations are:-

> "..... Thus, it shows that the decision for appointing Commission of Inquiry has been taken without forming any opinion as the same could not be formed in the absence of cogent material place before it. The decision is based on conjectures and surmises and perhaps with political vendetta in the mind of a perpetrators, thus, the approach and the action is not sustainable and the resultant effect thereof i.e. issuance of the impugned notification vide which the Commission of Inquiry has been appointed, deserves to be quashed."

It was further held that no opinion was formed about the existence of matter of "definite public importance". Relevant observations are extracted below:-

> "I am impressed and convinced by the primary contentions of learned counsel for the petitioner and I have held that there was no material produced before 'the council of ministers in any manner whatsoever. Thus, no opinion was formed by way of application of mind in appointing the Commission of Inquiry and that the Council of Ministers failed in its duty in opining as to whether the matter is of definite public importance. The

ingredients as envisaged under Section 3 of the Act, have not been complied with/fulfilled. Resultantly, the impugned notification dated December 7, 1999, copy Annexure P5, issued by Government of Haryana, is not sustainable. As such, the petition is allowed and the notification Annexure P-5, is quashed. ....”

On 10.5.2003, the State of Haryana again appointed a Commission of Enquiry, on the same terms of reference substituting Justice JC Verma Commission in place of Justice GS Chahal (Retd.).

Finding in the report of Commission are as under:-

“P.W. 35 Sh. V.S. Mishra, is from Haryana Distillery, Yamunanagar. He has produced consolidated statement showing the 56.30 lacs B.L. Received for the period from 1.3.1996 to 15.12.1997 as per Ex.P-155.

- The Rectified Spirit sold outside India from Distillery was 53,78,500 B.L. during the period of prohibition. The material was sent to London and Geneva from Yamunanagar via Jaipur Nasik Bombay and via Kandla Port Gujarat through Bonded Warehouse of Frost Falcon distillery Kandla Port, Gujarat. The witness says, no shipment certificates were available as part shipping of the consignment as per the requirement.
- According to the witness, the permits for export to outside India i.e. London and Geneva obtained were subject to the condition of production of shipment certificate or custom clearance certificate. He says that they were not the direct exports, but exported the goods to foreign importers through Globus Agronics and Frost Falcon Distilleries, who were holding permission for export and the foreign exchange used to be earned by those two firms. Permission was granted to export to the Haryana Distillery vide Ex. P-178 and P-179. He says that even though they were not the direct exporters, but they were being given permission to export by the department. Even though they had never applied for permission in any of the applications to the effect that order was received from the foreign buyer but still permission was being

granted.

- According to the witness, Globus Agronics and Frost Falcon are Delhi based firms and it is not known whether they had taken permission from Delhi State for export from Haryana for the purpose of export of Rectified Spirit outside the country.

II. FINDINGS AND OBSERVATIONS IN THE REPORT.

- Similarly, Associated Distilleries, Hissar, Haryana Distilleries, Yamuna Nagar, Frost Falcon Distilleries, Jahari had exported 7803000, 5378500 and 3386000 B.L. Outside India respectively.

- In regard to the export out of India of the R.S. Through the Delhi based agencies to the purchases at London and Geneva is concerned, I am of the opinion that the present reference in its context does not require this Commission to probe this matter or to give finding in this regard. It is upto the Government to examine the matter if it so desires or if it so deems fit that such like sales to export agencies based at Delhi which had made purchases for export to London and Geneva etc. amounts to sale made outside State of Haryana and whether some excise duties to be levied. The matter can only be examined at the Administrative level of the State of Haryana and not by this Commission as in my opinion such matter has no connection with the main references and, therefore, no findings are required to be given by this Commission in this respect or on any of the matters regarding sale of rectified spirit within the country but outside State of Haryana or export outside country. However, it is up to the Government/State to look into this aspect if it is so advised to do so or to find out if there was any evasion of excise duty or any other duty or tax. No finding or opinion in this regard are required to be given by this Commission for the reasons mentioned above.

- The petitioner was also informed that in

> the said Action Taken Report, the Government has specifically stated that the Excise and Taxation Department has been directed to take action to recover Excise Duty and other levies from the distilleries in question including the petitioner."

Extract from action taken report is as under:-

"3. That the issue of levy of export duty @ Re 1/- per bulk litre on 2,85,44,500 bulk litres of rectified spirit exported out of India by the distilleries in Haryana through third parties during the period of prohibition as the same was not a direct export can be examined at the administrative level.	Excise and Taxation Department has been directed to take lawfully permissible action to charge export duty from the distilleries in cases where the Commission has pointed out that the claim of export out of India is through third parties."

The petitioner filed an application pointing out that the Verma Commission was proceeding contrary to interim order granted in favour of the petitioner on 18.10.2002. On this application, this Court on 23.7.2004 granted an order restraining the Verma Commission from recording any finding against the petitioner to the following effect:-

> "Meanwhile, Justice J.C.Verma (Retired) Commission of Inquiry shall not record any findings against the petitioner."

On 30.7.2004, the Verma Commission gave its report and inspite of injunction granted by this court made observation and recorded finding against the petitioner in the matter of petitioner's liability to pay excise duty on the rectified spirit. The State Government on the basis of the said report, in action taken report, stated that the action was being taken against the petitioner to recover excise duty. On 27.10.2004, the petitioner amended the writ petition to challenge the findings and observations of the Verma Commission and also decision of the State Government contained in action taken report. On 5.11.2004, this court directed as under:-

> "Meanwhile no action against the petitioner on the basis of the findings recorded by Justice J.C.Verma,

Commission of Inquiry report shall be taken."

Inspite of this, on 3.3.2005, a show cause notice was issued to the petitioner by the excise authorities based on the observations and findings of the Verma Commission. The petitioner filed CM No.18282 of 2005 challenging the above action. On 19.7.2006, the excise authorities filed an affidavit stating that no action shall be taken on the show cause notice dated 3.3.2005 pending disposal of the writ petition.

Learned counsel for the petitioner contends that observations and findings of the Commission being in violation of order of this Court as well as decision of the State Government in action taken report and consequent issuance of show cause notice were void and were even otherwise outside the terms of reference of the Commission and, therefore, interim orders dated 18.10.2002, 23.7.2004 and 5.11.2004 may be made absolute and statement made in the affidavit filed by the excise authorities dated 19.7.2006 be held to be finally binding even after disposal of the writ petition.

Stand on behalf of the respondents is that the petitioner was granted permission for sale/export of rectified spirit to foreign buyers but the petitioner sold the rectified spirit to other companies. The said sales attracted export duty under the provisions of the Punjab Excise Fiscal Order 1932. It has been further stated that after the interim orders dated 23.7.2004 and 5.11.2004, no further action had been taken.

In the affidavit dated 19.7.2006, it was stated that notice dated 3.3.2005 was issued to the petitioner but the same will not be pursued till the matter is sub judice before this court.

The questions which arise for consideration are:-

(i) Whether findings recorded by the Commission are liable to be set aside on account of interim orders passed by this Court?

(ii) Whether notification dated 10.5.2003 (Annexure P.3/B) appointing Commission of Enquiry is bad in law?

(iii) Whether issuance of show cause notice dated 3.3.2005 for the period from 1.2.1996 to 31.3.1998 is liable to be set aside independent of the restraint order passed by

this Court to the effect that no findings be recorded by the Commission and no action be taken on the basis of findings recorded?

Re:Q.No.(i)

In **Delhi Development Authority v. Skipper Construction Company (P) Limited and another,** AIR 1996 SC 2005, while considering the effect of violation of an injunction, it was observed:-

> "18. The above principle has been applied even in the case of violation of orders of injunction issued by Civil Courts. In Clarke v. Chadburn, (1985) 1 All ER 211, Sir Robert Megarry V-C observed:
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> > "I need not cite authority for the proposition that it is of higher importance that orders of the Court should be obeyed. Wilful disobedience to an order of the Court is punishable as a contempt of Court and I feel no doubt that such disobedience may properly be described as being illegal. If by such disobedience the persons enjoined claim that they have validly effected some charge in the rights and liabilities of others, I cannot see why it should be said that although they are liable to penalties for contempt of Court for doing what they did, nevertheless those acts were validly done. Of course, if an act is done, it is not undone merely by pointing out that it was done in breach in law. If a meeting is held in breach of an injunction, it cannot be said that the meeting has not been held. But the legal consequence of what has been done in breach of the law may plainly be very much affected by the illegality. It seems to be on principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them."
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> 19. To the same effect are the decisions of the Madras and Calcutta High Courts in Century Flour Mills Limited v. S.Suppiah, AIR 1975 Madras 270 (FB) and Surjit Pal v. Prabir Kumar Sun, AIR 1986 Calcutta 220. In Century Flour Mills Limited, it was held by a Full bench of the Madras High Court that where an act is done in violation of an order of stay or injunction, it is the duty of the Court, as a policy, to set the wrong right and not allow the perpetuation of the wrong-doing. The inherent power of the Court, it was held, is not only

> available in such a case, but it is bound to be exercise it to undo the wrong in the interest of justice. That was a case where a meeting was held contrary to an order of injunction. The Court refused to recognise that the holding of the meeting is a legal one. It put back the parties in the same position as they stood immediately prior to the service of the interim order.
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> 20. In Surjit Pal (AIR 1986 Cal 220), a Division Bench of the Calcutta High Court has taken the same view. There, the defendant forcibly dispossessed the plaintiff in violation of the order of injunction and took possession of the property. The Court directed the restoration of possession to the plaintiff with the aid of police. The Court observed that no technicality can prevent the Court from doing justice in exercise of its inherent powers. It held that the object of Rule 2-A of Order 39 will be fulfilled only where such mandatory direction is given for restoration of possession to the aggrieved party. This was necessary, it observed, to prevent the abuse of process of law."

In view of the above, it has to be held that any steps taken in violation of order of this Court are liable to be set aside.

Accordingly, we set aside the finding and any action taken therein in violation of order of this Court.

Since the petition succeeds on the first question itself, we need not express any opinion on other questions raised in the petition.

We, however, make it clear that the respondents will not be debarred from taking any fresh action, if called for, in accordance with law for which we do not express any opinion either way at this stage.

The petition is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 21, 2006 (Rajesh Bindal)
'gs' Judge